SIOW CHOON SEE v. PUBLIC PROSECUTOR

[A.Cr.J. (Adams J.) May 4, 1961]

[Muar — Criminal Appeal No. 20 of 1961]

Criminal Law and Procedure — Plea of guilty — Retraction — Jurisdiction of Court.

The accused was charged with failing to comply with an order made under section 15 of the Prevention of Crimes Ordinance, 1959. On being brought before a Magistrate the accused pleaded guilty, but the Magistrate decided that he had no jurisdiction to try the case and directed that the case be transferred to the Sessions Court. In the Sessions Court the learned President refused to allow the accused to plead not guilty on the authority of the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) because the accused had already pleaded guilty before the Magistrate. On appeal,

Held: (1) the Magistrate had no jurisdiction and he could not have recorded any plea. The learned President being competent to try the case should have entered the plaintiff's plea however frivolous it might appear to be to him before he heard the evidence.

Per Adams J.: "The *dicta* of Rigby J. in *San Kim Kai's Case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case."

Case referred to:—

(1) *Public Prosecutor* v. *San Kim Kai* [1960] M.L.J. 265.

MAGISTRATE'S CRIMINAL APPEAL.

Adams J. (delivering oral judgment): The accused stood charged with the offence of failing to comply with the requirements of an order made under section 15 of the Prevention of Crimes Ordinance No. 13 of 1959. On his arrest he was produced before the learned Magistrate at Muar and the case was brought in the Magistrate's Court. He was charged before the Magistrate on the 15th of March, 1961 and pleaded guilty. He was produced again before the learned Magistrate on the 27th of March when the learned Magistrate quite rightly decided that he had no jurisdiction to try the case and directed that it shall be transferred to the Sessions Court.

The accused was produced in the Sessions Court on the 28th of March, 1961. When he was charged before the learned President he attempted to plead not guilty. The learned President, however, refused to allow him to do this as he held that the accused had already pleaded guilty before the learned Magistrate and following the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) the learned President saw no good reason why the accused should, as he put it, "retract his plea" because the accused admitted that he had been out of the house at the time stated in the charge.

The *dicta* of Rigby J. in *San Kim Kai's case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case. The proceedings before the Magistrate were a nullity. The Magistrate had no jurisdiction and he could not have recorded any plea. The first time the accused was charged before the learned President who was competent to try the case he pleaded not guilty and the learned President should have entered that plea however frivolous it might appear to be to him before he heard the evidence.

The appeal is therefore allowed and the case must go back to the President with the direction that the accused's plea of not guilty be entered and the case be tried.

I really do feel that it is time that the Police learned the relevant provisions of the Courts Ordinance which has, after all been on the Statute Book for over ten years and took a little care to ensure that a criminal case is brought in a Court that has jurisdiction to try it.

Appeal allowed.

LOH CHIK SAN v. LOH CHAK WAN

[A.C.J. (Ismail Khan J.) May 8, 1961]

[Seremban — Civil Appeal No. 4 of 1960]

Landlord and tenant — Notice to quit — Tenant not in personal occupation — Notice returned to landlord indorsed "gone away" — Whether valid determination of tenancy.

The sole question in this case was whether a notice to quit by a landlord to the tenant (who had sublet nearly the whole of the premises except a small room, and who was not in personal occupation of the said premises or room) by registered post and returned by the Post Office with the indorsement "gone away" was sufficient to determine the tenancy.

Held: the appellant did not personally occupy the said premises and the presumption of service was rebutted by the indorsement by the postal peon's certificate "gone away". As such there was no valid determination of the tenancy.

Per Ismail Khan J.: "Had the notice to quit been served according to law one calendar month from the date of the determination of the tenancy, it would have been sufficient in law. The prerequisite condition for determination of a periodical monthly tenancy, whether it is in respect of premises under the Control of Rent Ordinance or outside of it, is a valid and sufficient notice to quit. That must be determined by the Common Law for there is no statutory provision regulating the length of notice and mode of service."

Cases referred to:—

(1) *Gresham Howes Estate Co.* v. *Rossa Grand Gold Mining Co.* [1870] W.N. 119.

(2) *Hogg* v. *Brooks* (1885), 15 Q.B.D. 256.

CIVIL APPEAL.

Edgar Joseph Jr., for the appellant.
Lall Singh Muker for the respondent.

Ismail Khan J.: The appellant who is the principal tenant of controlled premises No. 7, Singapore Street, Seremban, appeals against the judgment and order of the President, Sessions Court, Seremban, granting possession of the premises to the respondent, the owner and landlord of the premises.

The respondent let the premises to the appellant as far back as 1937 on a periodical